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Book Reviews

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BOOK REVIEWS

PETROLEUM CONSERVATION. Edited by Stuart E. Buckley. Dallas: American Institute of Mining and Metallurgical Engineers, 1951. Pp. xx, 304. \$6.00.

Petroleum Conservation is required reading for every "lawgineer". And every person responsibly concerned with the production and use of oil and gas should strive, to the best of his ability and comprehension, to become an accredited lawgineer—he be lawyer, engineer, public official, business executive, economist, banker or royalty owner.

The term "lawgineer" was coined in jest and has sometimes been applied in derision, but within the joke is a core of serious significance. I recall attending an important conservation conference which broke up into groups, as conferences are wont to do—a group of lawyers and a group of engineers, each group hotly contending within its own ranks: but the lawyers disputed engineering, while the engineers argued law! The comic aspect of this incident should not obscure its deeper meaning: that the critical problems of conservation are mixed problems, which cannot even be fully understood, to say nothing of being solved, within the scope and terminology of a single professional discipline. Even the conflicts, in administrative, judicial and legislative forums, in which these problems have been resolved (often partially or tentatively) have differed greatly from such conflicts in the classic model, where the subject matter is thoroughly known to all parties, the aims of the contestants are clear, and the legal rules well-established. In most of the contests in which our present concepts and techniques of conservation were hammered out, a large and vital part of the subject matter consisted of things and events taking place thousands of feet below the surface of the earth, accessible to observation only through tiny holes constituting an infinitesimal part of the total; the existing rules of law were totally in-

adequate even when not actively inappropriate; and the practical and economic interests of the contestants, which chiefly motivated their actions and their formal postures, were often obscure and conflicting, even to those who seemed most cocksure. Under these conditions it behooved the geologist and the engineer to look forth from their ivory tower and to take account of the practical effect of their proposals upon the pocketbooks of oil-field owners and upon their customary rights and practices, as established by accepted principles of law. It was incumbent upon the lawyer to come out from his accustomed labyrinth of legal formulae, and to peer into the bowels of the earth. It was only practical that the businessman should learn to put dollars in his pockets today by espousing a program which yesterday he would have denounced as visionary and impractical. For all concerned, it was essential to establish a common body of knowledge accessible to all, and expressed in a vocabulary comprehensible to all. *Petroleum Conservation* is an extremely valuable contribution to this continuing process of mutual education.

It is not intended to minimize the importance of technical studies and reports, that is, those made and written by professionals, primarily for professionals. The conclusions which are expressed in *Petroleum Conservation* in qualitative terms and in language intelligible to the informed layman are based upon the professional work of hundreds, perhaps thousands, of geologists and engineers, expressed in quantitative and sometimes mathematical terms fully intelligible only to another professional. Professional work of critical importance has been done by the lawyers, who have cast out or remodeled obsolete and obstructive legal concepts, and who have devised new legal concepts to implement the new procedures suggested by the growing fund of technical knowledge. If the contribution of the lawyers sounds relatively less impressive, we must bear in mind, in defense of our own profession, that in the law old ideas die harder, and new ideas are born with greater travail, than in the field of science.

Petroleum Conservation is divided into ten chapters, comprising five major subdivisions. The first section (Chapters I and II) presents the position and purpose of oil and gas conservation in relation to world sources and supply, not only of oil and gas, but of other fuel resources. The frame of reference of this section includes elements of basic importance not usually given much consideration in the day-by-day thinking of people concerned with conservation. The second section (Chapters III and IV) describes in graphic detail the structure of petroleum reservoirs (which may be considered the basic operating and technical unit of conservation), the rocks of which they are made, and the working characteristics, at rest and in motion, of the fluids contained in the reservoir—water, oil and gas. The next section (Chapters V and VI) describes in detail what happens to the reservoir fluids in the various kinds of reservoirs when developed and operated in the various manners which have so far been attempted or imagined. The fourth section (Chapters VII and VIII) gives more detailed consideration to the effects of secondary recovery operations (conducted in fields which have been depleted or nearly depleted) and pressure maintenance operations (commenced at an earlier stage of depletion). The last section (Chapters IX and X) reviews, chiefly from a legal standpoint, the nature and problems of state regulation in relation to private operation, including cooperatives or unit operation of entire oil-fields.

Petroleum Conservation is a symposium, in substance though not in form. The entire book is so good that comparison of its various parts must seem invidious. Without intending derogation to any other part, this reviewer considers that the introductory section (Chapters I and II) and the section on reservoir control and operation (Chapters V and VI) are most clearly and thoughtfully presented.

As stated at the outset, *Petroleum Conservation* should be in the library of every lawgineer. That library should also include, as a basic minimum, a companion volume, *Anti-Trust Laws*, et al. v.

Unit Operation of Oil or Gas Pools (Am. Inst. of Mining and Metallurgical Eng'rs, 1948) by Robert E. Hardwicke, *Legal History of Conservation of Oil and Gas—A Symposium* (Section of Mineral Law, American Bar Association, 1938) and *Conservation of Oil & Gas, A Legal History, 1948* (Section of Mineral Law, American Bar Association, edited by Blakely M. Murphy), together with supplements to the book last named, published in 1949 and 1950.

Lucius M. Lamar.*

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MANUAL OF PREVENTIVE LAW. By Louis M. Brown. New York: Prentice-Hall, 1950. Pp. xx, 346. \$5.00.

Lawyers today are sensitive to the low regard in which they are held by the public.¹ The profession needs friends badly. To have a friend, it must be a friend. Lawyer Brown befriends the public in his *Manual of Preventive Law*. The book is written for laymen in an apparent effort to save them from costly and unhappy legal entanglements. How refreshing to observe a lawyer giving his time and talent directly to the people without hope of a substantially profitable reward.

The good deed is done by discussing 21 rather commonplace situations in which the average man of even slight affairs may find himself. In each situation a wrong move or a careless act may thrust the party into a lawsuit or at least call for expensive corrective measures. The author, for example, talks about signing contracts or documents, buying goods, selling goods, extending credit, making payment, receiving funds, starting a business, entrusting others with authority, and renting or leasing property. He has reversed the chronology of time, travelling backward from a litigated case to the time and place of the transaction between the parties, and observed the dereliction that was the genesis of the

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¹ Blaustein, *What Laymen Think of Lawyers*, 38 A. B. A. J. 39 (1952).

lawsuit. It is the fatal act or omission that is revealed to the reader—revealed and labelled as a pitfall for the unwary.

Ownership of property and business activity cannot be enjoyed without risk. Risk of what? Traditionally, risk of fault, of doing legal wrong. The author not only reveals the risks, that is, the opportunities for doing wrong, but in each situation suggests methods of minimizing the risks. He assumes, and, may we hope, assumes correctly, that complete absence of fault will in most cases result in freedom from legal censure or obligation. If this assumption is incorrect, and there are signs that it may be,² then freedom from legal liability will be achieved only by quitting business and transferring away all property. There will then be no need for a discussion of preventive law, for nothing that one may do will be enough to guarantee immunity from legal liability.

Chapter 2, "Scope of the Law", is one of the most entertaining. Here the meaning of "rules of law" and the nature of the judicial process are explained to the layman. "It is done carefully and simply, but one may note something of patient paternalism in explaining to the untrained why litigation slowly creeps and crawls through the courts. There is here even a defense of the lawyer who hedges in giving a quick opinion on a problem posed for him in chance conversation. The layman is made to realize that the uncertainty is not so much in the law or the lawyer's knowledge as it is in facts and the way that the facts are narrated by one without training in recognizing the material from the immaterial.

Since these remarks will be read by lawyers, it will accomplish little to talk in detail of the situations which Mr. Brown presents for the non-lawyer's study. No new legal material is intended. Well-understood rules of law are clothed in "do's and don't's" for the work-a-day world. It is enough to say that a reading of this book reveals that it is no easy task to search for causes and sources of legal misunderstanding. Both technique and skill are required for successful labor in preventive law. The author has such talents.

² Pound, *Law in the Service State*, 36 A. B. A. J. 977 (1950).

The book deserves notice and commendation for two reasons. One is the immediate good that will come to the lay reader. Of importance far above this is the auxiliary good that comes from the unintended suggestion to the American Bar that more of this type of thing be done. Why does the American property owner not possess "home remedies" in law as he does in medicine? Why are the weekly popular periodicals not filled with simple articles on "Why Agents Exceed Their Authority," along with "Why Exercise Harms the Body," or a piece entitled "Don't Lease from Month to Month" instead of "Don't Let Arthritis Rob Your Youth," or "Read Well Before Signing" rather than "Shake Well Before Drinking"? Why not?³ There is no good reason. I would like to see the American Bar Association install a Committee on Selected Writings in Preventive Law, charged with the responsibility of placing before the public via popular periodicals the "home remedies" for legal ailments. As a genuine public service and a way of recapturing esteem, nothing would be better—no, not even such a report as that of a committee on the usage of the fee tail male in Southern Rhode Island. *Manual of Preventive Law* should be adopted by American lawyers as the ideal gift to their clients.

*Talbot Rain.**

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SEX AND THE LAW. By Morris Ploscowe. New York: Prentice Hall, Inc., 1951. Pp. ix, 310. \$3.95.

There are few fields in which the law is more inadequate than it is in dealing with the problems that arise in the realm of sex. Judge Ploscowe's book will impress the reader with the urgent need for more realistic legislation and more effective administration of the law in this field. There are ten chapters, as follows: Marriage; Annulment; Divorce; Illegitimacy; Fornication, Adultery, and Indecent Exposure; Rape; Homosexuality, Sodomy and

³ See RODELL, *WOE UNTO YOU LAWYERS* (1939).

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Crimes against Nature; Psychopathic-Sex-Offender Laws and Crimes against Children; Prostitution; Marriage, Sex Crimes, and Social Policy. The analysis of the law concerning each subject demonstrates its inadequacy to achieve its purpose. The author offers his conclusions and suggestions for bringing the law dealing with these subjects abreast with present knowledge of human behavior and with present conditions of life. In the field of domestic relations, marriage of the immature and the mentally incompetent, hasty marriages out of the jurisdiction, and recognition by some states of common-law marriages are some of the trouble spots that are analyzed to show the failure of present laws to protect the institution of marriage and to promote stability of the home. Recommended is a modern code of marriage legislation and total abolition of the doctrine of common-law marriage in all states now recognizing it. The fact that migratory divorces constitute only a small percentage of the annual total is pointed out to remind us that divorce is a domestic problem in each state and that it is up to each state to set its own house in order. The author does not purport to have the answer to the confusion caused by lack of uniformity of the divorce laws of the different states. He concedes that it is doubtful that an amendment to the Federal Constitution to give the federal courts jurisdiction over marriage and divorce would be ratified by the necessary three-fourths of the states. Likewise, he concedes the slight likelihood that any uniform legislation on divorce will be adopted.

The chapter on illegitimacy contains enlightening discussions of the status of children born of artificial insemination, the use of blood tests to determine paternity, the need for legislation on these subjects, and the desirability of making a clear break with the rules of the common law concerning illegitimacy.

In the chapters on sex crimes the distinction is drawn between acts that result from abnormality and those that do not. The two types of acts present different problems and require different treatment. For example, it is pointed out that if the findings of the

Kinsey Report are to be believed our statutes in regard to such acts as fornication and adultery are in need of drastic reexamination, since much that is criminal under the law seems, according to the report, to be normal conduct in the average male. Statutes penalizing such conduct, needless to say, are but feebly enforced. But where sex offenses resulting from abnormality are concerned, a different and serious question is presented. In the fields of homosexuality and crimes against nature our laws are out of touch with reality. The idea prevailing among many modern judges and legislators that such aberrations are comparatively rare is brought into question by the Kinsey Report. Since much of this conduct never comes to the attention of law enforcement officials, the criminal laws involved are ineffective. Accordingly, the author suggests that since the law is powerless to correct much of such conduct that is indulged in privately by adults, it should not concern itself with it. The sex offender who uses force or who directs his acts toward young children is the one against whom the laws should be directed. Traditional rules of law and prison sentences are shown to give but little protection against this type of offender; he is as dangerous after serving his sentence as he was before. Also, the sex-psychopath laws enacted in some states, providing a procedure for confining such persons permanently, are shown not to be effective. In practical operation they have been used primarily against minor sex offenders rather than against the really dangerous ones. The author's conclusion is that there is still a great need for laws that will make it possible permanently to isolate potential sex killers and those offenders who use force or victimize young children.

On the whole, the book is not only informative as to the present state of the law and its inadequacy, but it drives home the need for a new and realistic approach to legislation and administration in this field of law.

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